(2016) 03 MAD CK 0074

In the Madras High Court

Case No : W.P. No. 35055 of 2012 and M.P. No. 1 of 2015

G. Samraj Jayakumar APPELLANT

Vs

Indian Bank and Others RESPONDENT

Date of Decision : 11-03-2016

Acts Referred:

Citation : (2016) 03 MAD CK 0074

Hon'ble Judges : M.M. Sundresh, J.

Bench : Single Bench

Advocate : K.M. Ramesh, for the Appellant; Rita Chandrasekar for Aiyar and Dolia, for the Respondent

Final Decision : Allowed

Judgement

M.M. Sundresh, J.—1. By consent, the writ petition itself is taken up for hearing.

2. The petitioner herein was working as a Manager with the respondent Bank. The petitioner reached the age of superannuation on 31.8.2010. A notification was issued by the respondent Bank on 21.8.2010 exercising second option for the pension scheme. Option was opened on 21.8.2010 and closed on 21.10.2010. The petitioner exercised the option on 27.8.2010. The following is the Annexure - I viz., Option Form to be filled in by the employees who are in the service of the Bank, signed by the petitioner on 27.8.2010 and addressed to the General Manager of the respondent Bank:

""To

The General Manager (HRM),

Indian Bank,

Head Office, Human Resource Dept.

66, Rajaji Salai,

Chennai 600 001.

I hereby declare that I have read and understood the terms of Settlement/Joint Note dated 27.04.2010 for extending another option to join Pension Scheme. I have understood the terms of Settlement/ Joint Note have been arrived at on the basis of the Unions/Associations offering to contribute 30% of the initial funding gap assessed for extending another option for joining the pension scheme. I am agreeable to the said contribution of 30% towards the initial funding gap and hereby voluntarily opt to become a member of the Bank''s Pension Scheme as per the provisions of the said Settlement/ Joint Note and to cease to be a member of Contributory Provident Fund Scheme and irrevocably authorize the Bank/Trustees of the Contributory Provident Fund to transfer the entire contribution to the bank along with entire interest accrued thereon to the credit of Pension Fund to be created for this purpose. I also authorize the bank to transfer to the pension fund an amount equal to 2.8 times of my revised pay for the month of November 2007 representing my share in the 30% contribution mentioned above from the arrears payable to me on account of wage revision in terms of Bipartite Settlement/ Joint Note dated 27.04.2010.

Signature Sd/- G.Samraj Jayakumar

Name in Full: G.Samraj Jayakumar

Designation: Senior Manager

Branch/Office: KTC branch, Tirunelveli

S.R. No.: 12139

Present Residential Address: 5F1 Ambai Road, Kulauanikarpuram, Tirunelveli - 627 005.

(Signature to be attested by the Branch Manager)

In Su..... Dep. Rs. 96124/- transferred to C.O on 27.8.10, C2C No. 45

Note: Additions/alterations in the text of the above form will render the option invalid.......

FOR BRANCH/OFFICE USE ONLY

Certified that we have recovered 2.8 times of basic pay components of revised pay for November 2007 Rs. 96124/- (Rupees Ninety six thousand one hundred twenty four only) from Mr./Mrs.G.Samraj Jayakumar (SR.No.12139) and sent to Circle Office, Tirunelveli on 27.8.10 vide CtoC No. 45''''

3. The following are the relevant terms of the Circular dated 21.8.2010 issued by the respondent Bank:

''''Terms of the Settlement

(1) All employees (Officers and Award Staff) who are in the service of the Bank

as on the date of this Settlement and exercise option to join the Pension Scheme in terms of this Settlement will contribute from their arrears on account of wage revision in terms of this Settlement will contribute from their arrears on account of wage revision in terms of the Settlement dated 27thApril 2010 an amount of Rs. 878.00 crores towards their share in the amount of Rs. 1,800.00 crores offered by Officers'' Associations and Employees'' Unions towards 30% of the estimated funding gap of Rs. 6000.00 crores. The said amount is worked out at 2.8 times of the revised pay for the month of November 2007, for individual employees.

(2) Another option for joining the existing Pension Scheme shall be extended to those employees who:-

(1) (a) were in the service of the Bank prior to 29thSeptember 1995 and continue in the service of the Bank on the date of this Settlement;

(b) Exercise an option in writing within 60 days from the date of offer, to become a member of the Pension Fund and

(c) Authorize the Trust of the Provident Fund of the Bank to transfer the entire contribution of the Bank along with interest accrued thereon to the credit of the Pension Fund.

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Irrevocable letter from employees not option for pension

The prescribed format is given in Annexure-IV. In the case of a serving employee from whom 2.8 times of revised pay of November 2007 has been recovered from wage arrears and who is now not interested in joining the pension scheme should submit the Irrevocable Undertaking Letter. In such case, the Branch is advised to refund the said recovery to the concerned employee.

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Role of the Branches/ Offices

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For serving employees

2. Every branch/office should obtain the relevant Option Form in triplicate from all the employees for whom the branch has recovered 2.8 times of revised November 2007 basic components (Basic Pay, FPP, PQP, etc.). Branch Manager/ Head of the Department has to attest the signature of the optee mentioning his/ her name and specimen signature number. In the option form executed by the employee, branch has to mention the amount recovered, CtoC No. and date of sending to the Circle Office.

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12. The option to join the pension scheme closes on 21.10.2010. No branch/ office should receive the Option Form after the due date. Option

Form submitted by the employees/ retirees/ family of the deceased employees or retirees on the last date should invariably be faxed (Fax No. 044-25247608) to our Department and details should also be submitted by IP Message to HO: HRM Department, Pension Cell (IP Nos. 10.141.5.27/ 10.141.5.36).

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Employees exercising the option to Pension Scheme

All employees who are in the service of the Bank as on 27.04.2010 and not opted for pension scheme earlier are requested to ensure that they have submitted the Option Form for joining the pension scheme and continued 2.8 times of the revised November 2007 salary.

Staff members, who are presently working in a different branch other than the branch which made the payment of salary arrears, have to immediately send the duly signed option forms in triplicate to their earlier branch where the impounded amount is held in Sundry Deposit.

If any employee who does not wish to opt for pension scheme and continue to remain in Contributory Provident Fund Scheme should submit the irrevocable Letter of Undertaking in the prescribed format and request the Branch Manager to refund the amount of contribution already recovered in this regard.''''

4. Thus, on a perusal of the said Circular, the employee concerned is duty bound to contribute the amount worked out at 2.8 times of the revised pay. In addition to that, he will have to authorise the Trust of the Provident Fund to transfer the entire contribution of the Bank along with interest accrued thereon to the credit of the pension fund. The option has to be exercised within 60 days from the date of the offer to become the member of the pension fund. In the event of an employee not interested in joining the pension scheme, he or she should submit an irrevocable undertaking letter. On receipt of the same, the Branch of the respondent will have to refund the said recovery to the concerned employee.

5. Coming to the facts of the case, the petitioner has expressed his desire to come under the scheme by giving the application on 27.8.2010 as mentioned above. He has, in specific terms, agreed for the payment of 2.8 times of revised pay apart from giving his authorisation for transfer of provident fund. Thereafter, the Provident Fund was credited to his account by the respondent Bank on 31.8.2010. He has not given any authorisation thereafter though the said amount was lying in his account. Thus, subsequently he made another request on 15.12.2010. On receipt of the same, by the impugned orders his request to be a member of the pension scheme was rejected on the ground that it is closed already on 21.10.2010.

6. The learned counsel appearing for the petitioner submitted that in view of the

above said undisputed facts the petitioner is entitled to the relief sought for. What is relevant is his earlier action and not the subsequent one. Reliance has been made on the following decision rendered by the High Courts of Punjab and Haryana, Delhi and Patna:

(1) Allahabad Bank, Jalandhar Vs. Resham Singh, (, 2010(4) LLJ 812) of High Court of Punjab and Haryana;

(2) Raj Bala Vs. Punjab National Bank, (W.P.(C) No. 8402 of 2010 dated 14.3.2011) of Delhi High Court;

(3) Bhateri Vs. Punjab National Bank, (W.P(C) No. 1617 of 2011 dated 18.5.2011) of Delhi High Court;

(4) R.C. Vasudev Vs. Punjab National Bank, (W.P(C) No. 3415 of 2010 dated 24.01.2012) of Delhi High Court;

(5) Suraj Mal Vs. Punjab National Bank, (W.P.(C) No. 2331 of 2011, dated 7.11.2012) of Delhi High Court;

(6) Shyam Bihari Rai Vs. Punjab National Bank, (Writ Jurisdiction Case Nos. 5629 of 2011 and 2289 of 2012) of Patna High Court;

(7) Kirti Sharma Vs. Punjab National Bank, (W.P.(C) No. 3584 of 2012 dated 22ndApril, 2013) of Delhi High Court;

(8) Udesh Kumar Chawla Vs. Union of India, (W.P.(C) No. 1678 of 2014, dated 18.3.2015) of Delhi High Court;

(9) Mangat Rai Sharma Vs. Indian Bank (W.P(C) No. 6783 of 2013 dated 6.4.2015) of Delhi High Court''''

7. Learned counsel had made specific reliance upon the decision of the Delhi High Court in Suraj Mal Vs. Punjab National Bank, (W.P.(C) No. 2331 of 2011, dated 7.11.2012), wherein it has been held as follows:

''''14. On perusal of the above option form dated 09.09.2010, it is clear that the petitioner agreed to all the terms and conditions of the scheme and authorised the Bank to transfer to the pension fund an amount equal to 2.8 times of his revised pay for the month of November 2007 representing his share in the 30% contribution mentioned above from the arrears paid on account of wage revision in terms of Bipartite Settlement/ Joint Note dated 27.4.2010. It is further stated that he was agreeable to the said contribution of 30% towards the initiation funding gap and thereafter voluntarily opted to become a member of the Bank''s Pension Scheme.

I am of the considered view that it was the duty of the respondent Bank to transfer the amount from the account of the petitioner in terms of the scheme as the petitioner had given all the powers to the respondent Bank to do the needful. No doubt, the respondent Bank refunded the amount to the petitioner, who is an ex-serviceman and retired as an Armed Guard from the Bank. At the time of receiving the total amount, he was not clear as to whether the Bank has transferred some amount for the scheme or not. He only realized thereafter and accordingly, when the respondent Bank did not transfer the amount from his account, then only he deposited the amount as required as per the scheme.

15. THEREAFTER, the respondent Bank communicated the petitioner that since the last date was over, therefore, they refunded the amount to his account.''''

Similarly, reliance has been made by the learned counsel for petitioner on the judgment of the Delhi High Court in Mangat Rai Sharma Vs. Indian Bank (W.P(C) No. 6783 of 2013 dated 6.4.2015), wherein it was held as under:

''''6. The respondent/Bank has contended in its counter-affidavit that on retirement of the petitioner, petitioner was credited the amount of provident fund being the terminal benefit, and it is therefore argued that the petitioner cannot get the benefit as claimed because the petitioner has received the entire provident fund amount. This contention of the respondent/Bank is however misconceived for the reason that the present is not a case where the petitioner was a retired employee of the respondent/Bank and that when he exercised the option he had already received the provident fund at the time of his retirement, and, the present case is a case where the respondent/Bank in spite of the petitioner before retirement having exercised the option, credited suo motu the provident fund amount to the account of the petitioner. The petitioner in his writ petition has stated that the said amount is still lying in the savings bank account from 31.8.2010 till date. Clearly, therefore the respondent/Bank should not be allowed to take advantage of its own wrong in wrongly crediting the provident fund amount, more so the petitioner has not utilized the same, and therefore there cannot be any estoppel against the petitioner in the facts of the present case.''''

8. Per contra, learned counsel for the respondent Bank submitted that the option made is not complete. The petitioner, having received his provident fund on 31.8.2010, has failed to authorise the Trust within the time limit. Therefore, the option, having been not validly exercised by the petitioner, the orders impugned cannot be found fault with.

9. Admittedly, the petitioner has exercised his option much before the closing of the Scheme on 21.10.2010 as early as on 27.8.2010. What is relevant is the date of exercising the option. The subsequent failure of the petitioner, if any, in not once again reiterating the authorisation and pay the provident fund can at best be termed as a procedural one. It will not take away the entitlement of the petitioner otherwise. The scheme has to be read as a whole. When the facts are not in dispute that the petitioner has exercised his option as early as on 27.8.2010, which was duly received by the Branch, he cannot be non-suited on a technical ground, as rightly held by the decisions referred by the learned counsel for the petitioner. Added to that, the petitioner has not given any undertaking expressing his interest in not joining the pension scheme by way of irrevocable

undertaking letter. If one has to see the scheme as a whole, the endeavour is to make an employee to come under the pension scheme. That is the reason why the revised pay of 2.8 times is sought to be included as a matter of course. It is only on an employee exercising the option of going out of the pension scheme by giving irrevocable undertaking letter, the consequences would follow. Thus, this Court is of the considered view that on merits the petitioner is entitled for the benefit. It is not as if the petitioner is otherwise disqualified from being considered under the scheme.

10. Accordingly, the orders impugned are hereby set aside and the writ petition stands allowed. Consequently the petitioner is directed to pay that part of the amount, being the provident fund as well as the 2.8 times of revised scale of pay as of November 2007, which was stated to be refunded to the petitioner subsequently in the year 2012 within a period of four weeks from the date of receipt of a copy of this order. Thereafter, the respondents shall treat the petitioner as a member of the pension scheme and do the needful within a further period of eight weeks. No costs. Consequently, the connected miscellaneous petition is closed.

